

# THE DMH COMPLAINT PROCESS

The Department of Mental Health (DMH) has a complaint process which applies to all programs and facilities operated by DMH, contracted for by DMH, or licensed by DMH.<sup>1</sup>

## I. WHO MAY FILE A DMH COMPLAINT?

Any individual (regardless of age or competence) may make a complaint, either verbally or in writing, to the Person in Charge or to any employee of a program or facility operated by DMH, contracted for by DMH, or licensed by DMH.<sup>2</sup> An employee who is made aware of a complaint must provide the individual with a complaint form and, if the person requests, assist the person in completing the form.<sup>3</sup> The Human Rights Officer (HRO) is also available to assist individuals in completing and filing written complaints.<sup>4</sup>

## II. WHAT TYPES OF EVENTS MAY A PERSON COMPLAIN ABOUT?

A complaint may be filed about an incident, condition or circumstance which is **dangerous, illegal or inhumane**.<sup>5</sup> An incident, condition or circumstance is considered inhumane when it occurs without regard for an individual's dignity.<sup>6</sup>

## III. WHAT HAPPENS AFTER SUBMITTING A DMH COMPLAINT?

After a complaint is made, the Person in Charge shall determine whether the complaint should be handled within the facility or not, depending on the seriousness of the incident or condition.<sup>7</sup>

### A "Below the Line" Complaint

An incident or condition which is determined not to be serious is considered "**below the line**" and is investigated within the program or facility.

### An "Above the Line" Complaint

An incident or condition which alleges medicolegal death, sexual assault or abuse, physical assault or abuse, attempted suicide resulting in serious physical injury, a felony, restraint or seclusion practices not in accordance with Department regulations which result in serious physical injuries<sup>8</sup> or which is sufficiently serious or complicated as to require an investigation by the Office of Investigation<sup>9</sup> will be considered "**above the line**." The Person in Charge must forward it to DMH's Central Office where it will be addressed as follows:

- **DMH operated or contract program or facility**

These complaints are forwarded to the DMH Office of Investigations.<sup>10</sup> If another agency is already investigating the complaint, the Office of

Investigations may let the other agency investigate, investigate on the other agency's behalf, or undertake a concurrent investigation.<sup>11</sup> However, if the Office of Investigations does not agree that the complaint is sufficiently serious, it may refer the matter back to the Person in Charge to investigate as a "below the line" incident.<sup>12</sup> The office will assign an investigator if it is undertaking the investigation.<sup>13</sup>

- **DMH licensed program or facility**

These complaints are forwarded to the **DMH Director of Licensing**<sup>14</sup> who will coordinate the investigation with the DMH Office of Investigations.<sup>15</sup>

#### **IV. WHAT DOES THE INVESTIGATOR DO?**

All investigations must begin with an interview of the complainant,<sup>16</sup> followed by an interview with the individual wronged, if the individual is not the complainant, and interviews with each person complained of.<sup>17</sup> The investigation should also include interviews with each witness and other people, including family members, who may have information related to the complaint.<sup>18</sup> The investigator will have 30 days (which may be extended for good cause) to conduct the investigation and file written findings of fact and conclusions with the Area Director, Assistant Commissioner for Child and Adolescent or Forensic Services (hereinafter, "Assistant Commissioner") or Director of Licensing, as applicable.<sup>19</sup>

#### **V. WHO WILL ISSUE A DECISION LETTER?**

##### **A "Below the Line" Complaint**

Upon receiving the complaint, the Person in Charge of the program or facility must undertake the necessary fact-finding and provide a written decision to the parties within ten days containing findings of fact and conclusions and any actions to be taken.<sup>20</sup>

##### **An "Above the Line" Complaint**

- **DMH operated or contract program or facility**

Upon receiving an investigation report, the Area Director or Assistant Commissioner has ten days to issue a decision letter.<sup>21</sup>

- **DMH licensed program or facility**

Upon receiving an investigation report, the Director of Licensing has ten days to issue a decision.<sup>22</sup>

## **VI. IS THERE A RIGHT TO RECONSIDERATION?**

Any party to the complaint has the right to request reconsideration of the decision from the person who issued the decision. The party must request reconsideration in writing within **ten days** of receipt of the decision.<sup>23</sup> The request must indicate the failure of the investigator to interview an essential witness or consider an important fact or factor. A final decision shall issue within ten days of receipt of the request for reconsideration.<sup>24</sup> Reconsideration is not a prerequisite to a DMH client filing an appeal.<sup>25</sup>

## **VII. IS THERE A RIGHT TO AN APPEAL?**

All appeals must be filed in writing within **ten days** of receiving a decision.<sup>26</sup>

### **A "Below the Line" Complaint**

- **DMH operated or contract program or facility**

The DMH client may appeal the decision of the Person in Charge to the DMH Area Director or the DMH Assistant Commissioner.<sup>27</sup>

- **DMH licensed program or facility**

The DMH client may appeal the decision of the Person in Charge to the DMH Director of Licensing.<sup>28</sup>

The appeal decision shall issue within 30 days, unless further fact-finding is required, in which case the decision shall issue within 40 days of receiving the appeal.<sup>29</sup>

### **An "Above the Line" Complaint**

- **DMH operated or contract program or facility**

A DMH client may appeal the decision of the Area Director or Assistant Commissioner to the Deputy Commissioner for Program Operations (hereinafter, "Deputy Commissioner"). The Deputy Commissioner must issue a decision within 30 days of receiving the appeal.<sup>30</sup>

- **DMH licensed program or facility**

A DMH client may appeal the Director of Licensing's decision to the DMH Commissioner. The Commissioner shall issue a decision within 30 days of receiving the appeal and it will be final.<sup>31</sup>

## **V111. IS THERE A FURTHER APPEAL?**

### **A "Below the Line" Complaint**

- **DMH operated or contract program or facility**

A DMH client may appeal the decision of the Area Director or Assistant Commissioner to the Deputy Commissioner. The Deputy Commissioner shall issue a decision within 30 days of receiving the appeal and it will be final.<sup>32</sup>

- **DMH licensed program or facility**

A DMH client may appeal the decision of the DMH Director of Licensing to the DMH Commissioner. The Commissioner shall issue a decision within 30 days of receiving the appeal and it will be final.<sup>33</sup>

### **An "Above the Line" Complaint**

- **DMH operated or contract program or facility**

A DMH client may appeal the Deputy Commissioner's decision to the DMH Commissioner. The Commissioner shall issue a decision within 30 days of receiving the appeal and it will be final.<sup>34</sup>

- **DMH licensed program or facility**

There is no further appeal.

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## ENDNOTES

1. 104 CMR 32.01(1)(a).
2. 104 CMR 32.03(1).
3. 104 CMR 32.05(1)(a).
4. 104 CMR 32.05(3)(a).
5. 104 CMR 32.03(1).
6. 104 CMR 32.02.
7. 104 CMR 32.03(2).
8. 104 CMR 32.05(2)(d)1-6.
9. 104 CMR 32.05(2)(d)7.
10. 104 CMR 32.03(3).
11. 104 CMR 32.05(4)(a)3.
12. 104 CMR 32.05(4)(a)4.
13. 104 CMR 32.05(4)(a)5.
14. 104 CMR 32.03(3).
15. 104 CMR 32.05(2)(d)(7).
16. 104 CMR 32.03(2).
17. 104 CMR 32.04(1)(a).
18. 104 CMR 32.04(1)(b).
19. 104 CMR 32.05(5)(a).
20. 104 CMR 32.05(2)(c).
21. 104 CMR 32.05(4)(b).
22. 104 CMR 32.05(4)(b).
23. 104 CMR 32.03(5)(a).
24. 104 CMR 32.03(5)(c).
25. 104 CMR 32.03(5).
26. 104 CMR 32.03(6).
27. 104 CMR 32.03(6)(a)1.
28. 104 CMR 32.03(6)(a)1.
29. 104 CMR 32.03(6)(a)1.
30. 104 CMR 32.03(6)(a)1.
31. 104 CMR 32.06(6)(b)3.
32. 104 CMR 32.03(6)(a)2.
33. 104 CMR 32.03(6)(a)3.
34. 104 CMR 32.03(6)(b)2.